

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-12/08-570
)
 Appeal of)

INTRODUCTION

The petitioner appeals from a decision by the Department for Children and Families, Child Care Division, denying a childcare subsidy variance request to pay the petitioner's co-payment to her child care provider. The issue is whether the Department's decision is an abuse of discretion. The facts are not in dispute.

FINDINGS OF FACT

1. Petitioner is a single parent who lives with her two children and her boyfriend; her boyfriend is the father of her baby. Petitioner's older child is three years old and attends daycare. Petitioner is employed. She does not receive any child support from the father of her older child.

2. On or about November 3, 2008, the Child Development Division denied petitioner's request for a variance. On or about December 11, 2008, petitioner submitted a variance request to the Department stating that her expenses were more than her take-home pay. The variance request was denied. A

fair hearing request was filed on December 15, 2008. The Commissioner's Review was issued January 2, 2009 in which the variance denial was upheld. The Commissioner wrote that they needed to follow the guidelines given increased demand and decreased funding.

3. A telephone status conference was held on January 5, 2009. Petitioner agreed that the income figures used by the Department were correct.

ORDER

The Department's decision to deny a variance is affirmed.

REASONS

The Vermont Legislature established a child care subsidy program for parents who meet certain eligibility criteria. The pertinent statute is 33 V.S.A. § 3512 which states, in part:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment or to obtain training leading to employment...

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size.

The Department adopted rules including a sliding fee scale based upon gross income and family size. Child Care Services Regulation 4031 and 4032.

In addition, the Department has discretion to allow a variance in special and unique situations. Regulation 4035. It should be noted that the Commissioner plans to suspend variances given the State's economic condition.

The child care subsidy program is not an entitlement program. The ability of the Department to meet a potential applicant's needs is based upon the funding of the program. If there is insufficient funding, potentially eligible applicants will be denied services. Given these constraints, variance requests are closely scrutinized.

The standard in this case is whether the Department abused their discretion in denying petitioner's request. Over the years, state funding for childcare subsidies has not kept pace with need. The lack of funding combined with the State's current economic health leaves the Department in a difficult position as they attempt to meet competing needs. The Department made a difficult decision in this case. They did not abuse their discretion in denying petitioner's variance request. As a result, the Department's decision is

affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No.
1000.4(D).

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